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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

PADAM GIRI,)	No. C 07-5219 JCS
)	
Plaintiff)	
)	
v.)	
)	PROPOSED ORDER
ROBERT MUELLER, III, Director, Federal)	
Bureau of Investigation; et al,)	
)	
Defendants.)	

PROPOSED ORDER

Plaintiff asks the Court to compel Defendants to adjudicate his application for asylum. However, Congress has explicitly forbidden such legal actions. In addition, Defendants Mueller and Mukasey are not properly named in this action. Accordingly, the Complaint is dismissed for lack of subject matter jurisdiction.

Plaintiff asserts that under 8 U.S.C. § 1158(d)(5)(A)(iii), he has a right to have his application decided within 180 days after the date he filed his application. Complaint, p. 6 ¶ 40. However, the same statute provides that

[n]othing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

8 U.S.C. § 1158(d)(7). Mandamus relief is only available where the plaintiff establishes a clear and

1 certain claim, and the existence of a nondiscretionary duty that is free from doubt. Kildare v. Saenz,
2 325 F.3d at 1084.

3 Moreover, the United States, as sovereign, can be sued only to the extent that it has
4 consented to be sued. United States v. Sherwood, 312 U.S. 584, 586 (1941); Gilbert v. DaGrossa,
5 756 F.2d 1455, 1458 (9th Cir. 1985). Here, Congress has explicitly proscribed against Plaintiff's
6 action. 8 U.S.C. § 1158(d)(7). Accordingly, the Court lacks subject matter jurisdiction, and the
7 Complaint shall be dismissed pursuant to Fed. R. Civ. P. 12(b)(1). Vang v. Gonzales, 237 Fed.
8 Appx. 24, 31 (6th Cir. 2007) (holding a fourteen year delay in processing petitioners' asylum
9 applications did not deny them due process rights, taking note of § 1158(d)(7)); Gjeluci v. Chertoff,
10 2005 WL 1801989, at *1 (E.D. Mich. July 27, 2005) (finding that § 1158(d)(7) expressly precludes
11 a finding that a clear nondiscretionary duty exists).

12 In addition, Defendants Mueller and Mukasey are not properly named as defendants. Since
13 March 1, 2003, the Department of Homeland Security ("DHS") has been the agency responsible for
14 implementing the Immigration and Nationality Act. See 6 U.S.C. §§ 271(b)(5), 557. Thus, the only
15 relevant Defendants here are those within the DHS, and Defendants Michael B. Mukasey and Robert
16 S. Mueller should be dismissed. See Clayton v. Chertoff, et al., No. 07-cv-02781-CW, slip. op., at
17 4-7 (N.D. Cal. Oct. 1, 2007); Konchitsky v. Chertoff, No. C-07-00294 RMW, 2007 WL 2070325,
18 at *6-7 (N.D. Cal. July 13, 2007); Dmitriev v. Chertoff, No. C 06-7677 JW, 2007 WL 1319533, at
19 *4 (N.D. Cal. May 4, 2007).

20 The Complaint is hereby DISMISSED, with prejudice. IT IS SO ORDERED.

21 Date:

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JOSEPH C. SPERO
United States Magistrate Judge
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